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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. T-00000B-97-0238

QWEST'S COMMENTS ON THE STAFF'S FINAL RECOMMENDED DECISION RE: CHECKLIST ITEM 1, INTERCONNECTION AND COLLOCATION

October 23, 2001

Arizona Corporation Commission
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Qwest Corporation hereby provides its comments to the Staff's final recommended decision with respect to Checklist Item 1, issued on October 12, 2001 (hereinafter, Report). Checklist item number 1 concerns both interconnection and collocation. Approximately 2 and ½ weeks of workshops were held on these topics in Arizona alone.

Qwest commends Staff for its hard work in generating and issuing the Report. Qwest accepts virtually every conclusion in the Report. Qwest does, however, seek reversal of two interconnection issues (ratcheting and call transit records) and one collocation issue (provisioning intervals). Qwest also seeks slight modification of two interconnection issues (indemnification and interconnection at the access tandem). Qwest respectfully requests that the Arizona Corporation Commission (ACC) adopt the Report with the changes reflected below.

I. <u>INTERCONNECTION</u>

A. Qwest seeks Reversal of Two Interconnection Issues

1. Disputed Issue No. 10: Ratcheting (SGAT § 7.2.2.9.3.2)

In its Final Report, the Staff departs from its previous finding that the ratcheting provisions proposed by AT&T and MCIW should not be adopted. The revised conclusion is based primarily on the incorrect assumption that Qwest agreed to similar language in the state of Washington. *Report at ¶ 364.* This is incorrect. Qwest has a Motion for Reconsideration on this topic pending before the Washington Commission.

Qwest assumes that Staff's confusion is based upon the difference between commingling and ratcheting. Commingling is the placement of multiple types of traffic on the same special access circuit. Qwest specifically allows commingling. See SGAT §

7.3.1.1.2. Very different, however, is the rate that CLECs should pay when they place multiple types of traffic on the same special access circuit. Qwest asserts that CLECs should pay the full cost of the special access circuit. AT&T and WorldCom argue that Qwest should ratchet down these federally tariffed rates based on the percent of traffic that is local. Qwest has never agreed this "ratcheting" proposal. This proposal has been rejected by Colorado, Utah, Wyoming, New Mexico, Iowa, and North Dakota. Administrative Law Judges in Oregon, Nebraska, Idaho and Montana have also found this proposal inappropriate. Even the Washington Commission, which the Report cites to, initially agreed with Qwest on this proposal. It is true that a recent Washington decision changes course; however, a Motion for Reconsideration is currently pending on the subject.

The hypothetical offered by WorldCom that appears to have swayed the Staff to reconsider its previous conclusion has already been presented to and rejected by the FCC. In CC Docket 96-98, WorldCom proposed that CLECs be permitted to purchase their local transport facilities at TELRIC rates instead of as special access, converting DS-1 lines used to carry local traffic to TELRIC-rate facilities, bring those facilities to an ILEC end office at DS-3, and "multiplex the DS-1s onto the DS-3 they have purchased out of the ILEC's special access tariffs."[1] Just as argued in this case, WorldCom claimed that a prohibition on this type of commingling would be inefficient and require CLECs to operate duplicative networks. As AT&T and WorldCom argued here, WorldCom also claimed that the local circuits would theoretically be "segregated" from toll circuits, and

[1] Supplemental Order Clarification, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 (June 2,

that ratcheting of rates should be permissible to reflect that a portion of the facilities are used to carry local traffic.[2]

The FCC considered each of these arguments and <u>specifically</u> rejected them.[3] The FCC stated that it was not convinced that lifting the prohibition would not lead interexchange carriers to use TELRIC-rate facilities to bypass switched access.[4] The revised conclusions of the Arizona Staff are inconsistent with the findings of the FCC and should not be adopted by the Commission. It is especially important to maintain the status quo given the fact that FCC is likely to revisit this issue and give further guidance.

With the exception of Washington, all other state commissions to consider this issue have agreed with Qwest, and rejected the approach urged by Staff. The Colorado, Oregon and Multi-State 271 proceedings have all considered the same issue and have rejected the AT&T/WorldCom proposal. In the Multi-State proceeding, the Facilitator found similarly and stated "the FCC, along with most state commissions, has identified universal service as an important regulatory goal. Access charges have been and continue to be an important mechanism for commissions in achieving the goal of universal service. Adoption of SGAT provisions that have the potential to undermine the effectiveness of the current pricing mechanism for special access requires a more comprehensive review of all Qwest pricing policies and their effect on universal service

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2000) ("*Supplemental Order Clarification*"); *Supplemental Order Clarification* ¶ 28 & n. 7, at 6-8.

[2] *Id.* at 7.

[3] *Id.*

[4] *Id.*

than has been accomplished in this proceeding."[5] As stated above, five commissions have specifically adopted Mr. Antonuk's resolution of this issue.

The Colorado Commission adopted Qwest's proposal that permits CLECs to use spare special access facilities for local interconnection, but with the stipulation that all circuits used are to be priced at special access rates, concluding that this provides AT&T and WorldCom the opportunity to enjoy the available efficiencies but protects the integrity of the pricing system.

The AT&T and WorldCom proposal was rejected in other jurisdictions, in part on the basis that they had failed to distinguish their proposal from those about which the FCC has expressed concern and about which it may be expected to provide further guidance in the future. That failure is material here, given the standard that the FCC has applied to its examinations under Section 271:

> Because the substantive interim rules we have adopted in our orders on this subject define the nature of SWBT's statutory obligations, SWBT's adherence to them cannot constitute a basis for finding noncompliance with the checklist. It would be quite unfair to a BOC applicant to deny it approval to compete in the long-distance market on the basis of conduct that, in other proceedings, we have explicitly authorized. For the section 271 process to work, potential BOC applicants must have a reasonable degree of certainty about what they need to do to bring themselves in compliance with statutory requirements, and they therefore need to be able to rely on our rules for guidance.[6]

[5] Second Report, Workshop One, May 15, 2001.

[6] Memorandum Opinion and Order, *Application Of SBC Communications, Inc. Southwestern Bell Telephone Company And Southwestern Bell Communications Services, Inc. d/b/A Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* CC Docket No. 00-65 FCC 00-238 ¶ 23 (June 30, 2000) ("*SBC Texas Order*") *SBC Texas Order* ¶ 228.

Qwest believes that the Arizona Staff's new approach conflicts with, and reaches well beyond, what the FCC has required. To require ratcheting imposes an unfair burden upon Qwest, provides an unwarranted advantage to CLECs, and puts at risk important policy objectives as discussed above. Accordingly, Qwest respectfully submits that this approach should be rejected, and that ratcheting of rates not be allowed.

2. *Disputed Issue No. 15: Reciprocal Charges for Call Records (SGAT §§ 7.5.4 & 7.6.3)*

Qwest is not exactly sure what the Staff did here. This issue concerns whether Qwest is entitled to compensation for generating call transit records on behalf of CLECs. In its Final Report, Staff changes course from its draft report and concludes that charges should be based on "records processed, not records transmitted." Report at ¶¶387-88. Qwest is unclear what difference, if any, this distinction draws. Given that Qwest is unclear of the impact, Qwest respectfully requests reversal to the original decision. Qwest also adds that all 11 commissions to consider this issue to date have agreed with Qwest's views. Finally, given that this is a cost issue, at a minimum Qwest recommends that this issue be decided in the ongoing Arizona cost docket.

B. Qwest Seeks Clarification of Three Interconnection Issues

1. *Disputed Issue No. 1: Indemnification (SGAT § 7.1.1.1.2)*

Staff's recommendation is unclear on this issue. This issue concerns whether Qwest must reimburse CLECs for the failure to meet performance expectations through the Performance Assurance Plan (QPAP) and simultaneously be required to compensate CLECs for the failure to provision an individual trunk on time even though, overall, Qwest meet the performance expectations set forth in the PIDs and QPAP.

It is not clear whether Staff defers this issue to the general terms workshop where indemnification issues overall will be decided. If so, Qwest has no objection to the recommendation. However, Staff also makes an incorrect statement that the Commission already decided this issue in the context of resale. The Commission did decide a related, but different issue in resale. As correctly set forth in the Report, the Commission determined that Qwest could be required to pay penalties out of both the QPAP and the Service Quality Plan Tariff simultaneously. Report at ¶298. Unlike resale, which concerns basic telephone service, interconnection provisioning is not the subject of the Service Quality Plan Tariff. Thus, CLECs either seek (1) true double recovery or (2) recovery for outstanding performance, neither of which is acceptable to Qwest. In the former situation, if Qwest failed to provision trunks at parity with retail, the QPAP will require Qwest to compensate CLECs for each missed commitment. Then, CLECs could obtain recovery under the indemnification provisions of the SGAT thereby recovering twice. In the latter situation, Qwest could be meeting its overall performance obligations, yet still be required to compensate CLECs for the failure to provision a single interconnection trunk. The FCC has made very clear that providing service at parity with retail is all that the law and 271 requires.[7] Thus, despite Staff's statement to the contrary, this issue is very different from that decided by the ACC in the context of resale.

Qwest requests that the Hearing Division defer resolution of this issue until it considers the indemnification language in the SGAT. This will occur when the Division considers General Terms and Conditions. That is what every other Commission throughout Qwest's region has done to date.

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[7] New York 271 Order at ¶58.

2. *Disputed Issue No. 11: Interconnection at the Access Tandem (SGAT § 7.2.2.9.6)*

This issue concerns the propriety of CLECs interconnecting at the access tandem. In its Draft Report, Staff incorrectly assumed that Qwest had agreed to language recommended in the 7-State process. Instead, Qwest recommended the 7-State language with overlay of the "512 CCS Rule." For a detailed description of this issue, see Qwest's Comments to the Draft report issued August 27, 2001. In those comments, Qwest cited to the transcript where CLECs agreed that the 512 CCS Rule was appropriate.

For the most part, Staff agreed with Qwest's recommendation. However, Staff recommends use of "512 CCS so long as not 512 busy hour CCS." Report at ¶ 372. The 512 CCS Rule, like trunk blockage, is measured during the busy hour. That is industry custom. The entire purpose of the 512 rule is to ensure that CLECs transition to direct trunks when traffic merits. The busy hour has to be the standard. Telephone networks are designed to run during the busy hour. Calls can block during the busy hour, and those trunks will have virtually no traffic at 2:00am. Qwest respectfully requests that the Hearing Division use the 512 CCS rule, and not drop the "so long as not 512 busy hour CCS" language.

II. <u>COLLOCATION</u>

Qwest takes issue with Staff's recommended resolution of Collocation Issue Number 4C. This issue concerns whether or not Qwest should have 30 additional days to provision collocations when CLECs fail to forecast the collocation. For inexplicable reasons, Staff stated that "Qwest has stated it will meet a 90-day interval despite the lack of a forecast." Report at ¶426. Despite Staff's suggestion to the contrary, Qwest has challenged this issue at every stage of the proceeding. Qwest spent several pages in its initial comments addressing this issue. Rather than restate its views again, Qwest simply states that the FCC specifically approved the Qwest intervals and recommends that the Hearing Division review Qwest's August 27, 2001, comments on the topic.

DATED this 22nd day of October, 2001.

Respectfully submitted,

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